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FEDERAL COMMUNICATIONS COMMISSION
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Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	
Implementation of the Local Competition Provisions in the Telecommunications Act of 1996	CC Docket No. 96-98

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FURTHER COMMENTS OF BELL ATLANTIC

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FURTHER COMMENTS OF BELL ATLANTIC

Bell Atlantic[1] submits the following comments in response to issues raised in the Commission's Notice of Proposed Rulemaking concerning implementation of section 251 of the Telecommunications Act of 1996.[2]

Summary

The Commission should not write detailed regulations concerning dialing parity, but rather should leave decisions concerning local dialing plans to the States. If, however, the Commission believes that a national standard is necessary, it should adopt "full two-PIC" for toll dialing parity and require the carriers which benefit from intraLATA presubscription to pay for it.

The Commission should not adopt any rule that would require that all carriers must have "the same" access to directory assistance, operator services and related

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[1] The Bell Atlantic telephone companies serving New Jersey, Pennsylvania, Delaware, Maryland, Virginia, West Virginia and the District of Columbia.

[2] *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket No. 96-98, Notice of Proposed Rulemaking (rel. April 19, 1996) ("Notice").

capabilities. All that should be required is that the access permit carriers to offer service and that there be no differences perceptible to the customer. In addition, the Act simply requires that the local exchange carrier offer these capabilities to other carriers on reasonable nondiscriminatory terms. It does not obligate — and could not rationally obligate — the exchange carrier to ensure that the other carrier's customers have such access.

The Commission should model its network information disclosure rules on its existing part 68 requirement that notice be reasonable and should not impose rigid, fixed time limits that can delay the introduction of new services to the detriment of the public.

The Commission should move expeditiously to transfer number administration functions from Bellcore and exchange carriers to a new administrator. It should promptly reaffirm the traditional role of the States in numbering matters.

1. Dialing Parity

The States Should Decide Issues Relating To Dialing Parity.

The States should decide issues relating to dialing parity, including the means of implementing toll dialing parity, who should pay the implementation costs and whether exchange carriers should be required to notify customers of the change. There is no need for federal standards or nationwide uniformity.

The Notice correctly states that there is substantial variation in the intraLATA toll dialing parity requirements and implementation methodologies that individual States have already adopted.[3] The States, which are closest to concerns in their

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[3] Notice ¶ 210.

own jurisdictions, should continue the process of deciding those issues for a number of reasons. First, nothing in the 1996 Act indicates that Congress intended that the Commission preempt the States on issues relating to implementation of dialing parity. Second, there is no advantage to a national standard for dialing parity implementation issues. Third, States can better select the methods that most appropriately meet the individual needs of their citizens. Fourth, any nationwide standard will necessarily contravene the rules already established by some States; requiring carriers to change the implementation methodology already adopted pursuant to a State order would be wasteful.[4]

Nevertheless, if the Commission chooses to adopt a nationwide standard for implementing intraLATA toll presubscription — which it should not — it should adopt a full two-PIC methodology. Full two-PIC allows customers to chose an interLATA carrier and a separate intraLATA carrier without limitations and, therefore,

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[4] Changing methodology midstream would require additional investment in equipment and extra, otherwise unnecessary personnel hours.

increases customer choice. This has been well recognized, as nearly all States that have chosen a methodology have adopted full two-PIC.[5]

Exchange carriers should not be required to add an additional presubscription option for international calls or any other class of toll calls.[6] Nothing in the legislative history of the 1996 Act suggests that Congress intended that callers have a third presubscription choice for international calls, let alone fourth, fifth or other choices for other categories of toll calls.[7] A "smart-PIC" or "multi-PIC" capability is not

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[5] Regulations To Provide Tel. Subscribers Equal Access to Alternative Intrastate Interexchange Carriers, 11 APUC 195, 1991 WL 560835 (Alaska P.U.C . June 25, 1991); Rulemaking Regarding Competitive Telecommunications Serv. ,162 P.U.R.4th 217, 1995 WL 479519 (Ariz. C.C. June 23, 1995); Southern New England Tel. Co. Implementation of Intrastate Equal Access and Presubscription, No. 94-02-07, Decision at 15-16 (Conn. P.U.C. Oct. 26 1994); In re Investigation Into the Competitive Provisions of Intrastate Telecommunications Serv., No. 42, Order No. 4202 at 10 (Del. P.S.C. April 30, 1996); IntraLATA Presubscription, 160 P.U.R.4th 41, 1995 WL 111239 (Fla. P.S.C. Feb. 13, 1995); Adoption of Rules Relating to Intra-Market Service Area Presubscription and Changes in Dialing Arrangements Related to the Implementation of Such Presubscription, No. 94-0048, Order (Ill. C.C. Aug. 9, 1995); Interexchange Carriers, and WATS Jurisdictionality, No. 323, Order, 1994 WL 762803 at *11 (Ky. P.S.C. Dec. 29, 1994); In re MCI Telecommunications Corp., 160 P.U.R.4th 19, 1995 WL 217268 (Mich. P.S.C. Mar. 10, 1995); Investigation into IntraLATA Equal Access and Presubscription, No. P-999/CI-87-697, Order, 1994 WL 449062 at *16 (Minn. P.U.C. July 21, 1994); The Investigation of IntraLATA Toll Competition for Telecommunications Serv. on a Presubscription Basis, No. TX94090388, Order Approving Presubscription and Proposal of Rules at 27, (N.J. B.P.U. Dec. 15, 1995); Investigation into IntraLATA Interconnection Arrangements, No. I-00940034, Opinion and Order at 20 (Penn. P.U.C. Dec. 14, 1995); General Investigation into IntraLATA Competition in West Virginia including Equal Access in the IntraLATA Market, No. 94-1103-T-GI, Commission Order Upon Petition for Reconsideration at 5 (W. Va. P.S.C. Dec. 7, 1995); Exchanges of Ameritech Wisconsin, No.6720-TI-111, Findings of Fact, Conclusions of Law and First Final Order, 1995 WL 481342 at *19 (Wis. P.S.C. July 25, 1995).

[6] Notice ¶ 206.

[7] If international calls can be separately presubscribed, why not separate choices for calls to Canada or calls to California or calls to the Central Time Zone?

available today in most switches, and there is no indication that enough customers want a third PIC to make it worth the development and deployment costs. No State that has ordered intraLATA presubscription has required "three-PIC." Moreover, PBX and Centrex customers — customers who are the main international callers — already can program their switches to provide as many combinations of long distance companies as they want.

In addition, States should decide the mechanism for recovery of implementation costs and whether exchange carriers should be required to notify consumers about intraLATA presubscription.[8] However, if the Commission decides how the implementation costs should be recovered, the new intraLATA presubscribed carriers — the only carriers who will benefit from intraLATA presubscription — should pay the costs. Unless interexchange carriers bear the full costs of implementing intraLATA presubscription, exchange carrier customers who do not switch intraLATA toll carriers and do not benefit from presubscription would ultimately be required to pay for it. Similarly, the Commission should not establish any nationwide rule regarding notifying customers about presubscription choices, but if the Commission does require notification, it should also be paid for by the interexchange carriers, which benefit from the new form of dialing parity.

Finally, Bell Atlantic agrees with the Commission's tentative conclusion[9] that, pursuant to section 251(b)(3), an exchange carrier must permit customers to dial the

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[8] Notice ¶¶ 213, 219.

[9] Notice ¶ 211.

same number of digits to make a local call within a local calling area (as defined by the exchange carrier's tariff) notwithstanding the identity of the caller's or called party's local exchange provider.

The Commission Should Modify Slightly Its Definition of Nondiscriminatory Access to Telephone Numbers, Operator Services, Directory Assistance and Directory Listing.

As with other aspects of section 251, the Commission should not adopt detailed rules relating to a carrier's duty to provide nondiscriminatory access to telephone numbers, operator services, directory assistance and directory listings. However, the Commission should modify slightly its tentative definition of what constitutes "nondiscriminatory access."

First, to be nondiscriminatory, access need not be "the same access that the LEC receives," as the Commission suggests.[10] Rather, access must simply be of a type that will permit the other carrier to provide comparable services with no difference in quality perceptible to callers. Such a definition is consistent with both the Commission's and the decree court's definition of equal access.[11] Of course, offering "the same access" would also meet the Act's nondiscrimination requirement.

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[10] Notice ¶ 214.

[11] The decree court was asked to interpret "equal access" to require strict technical equality of services and facilities. Judge Greene rejected this "absolute technical equality" standard and required simply that consumers should "perceive no qualitative differences." *United States v. Western Elec. Co.*, 569 F. Supp. 1057, 1063 (D.D.C. 1983). The Commission subsequently adopted this same approach. *MTS and WATS Market Structure Phase III*, 100 F.C.C.2d 860, 877 (1985) ("With regard to the definition of 'equal in type and quality,' we recognize that a definition of equality that is overly quantitative and microscopic in detail is impractical. . . . We concur with the District Court in its MFJ Reconsideration opinion that technical standards based upon the

Second, the Commission seems to misread the requirement that exchange carriers must provide for nondiscriminatory access to operator services, directory assistance and directory listings. Section 251(b) requires exchange carriers to provide these capabilities *to other carriers* on nondiscriminatory terms and without unreasonable dialing delays.[12] However, the Notice suggests that the exchange carrier's duty goes beyond this to require that it ensure that *the other carriers' customers* have such access to operator services.[13] The exchange carrier, naturally, can control only its part of the service, not what the other carrier provides. While it can ensure that what the other carrier gets meets the standards of section 251, it cannot be responsible for what that carrier's customers receive.

In addition, the Notice could be read to suggest that exchange carriers have an affirmative obligation to ensure that the telephone numbers of other carriers' customers are in the exchange carrier's directory assistance database.[14] However, the Act requires only that the exchange carrier must (1) offer other carriers the opportunity to have their customers' numbers in its database on nondiscriminatory terms and (2) offer all customers the ability to obtain that database, regardless of what carrier provides their local telephone service.

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perceptions of customers are appropriate and that 'absolute technical equality' need not be achieved.").

[12] 47 U.S.C. § 251(b)(3).

[13] Notice ¶ 216 ("that a telephone service customer . . . must be able to connect . . . ."); Notice ¶ 217 ("that all telecommunications service providers' customers must be able to access. . . .").

[14] Notice ¶ 217.

Bell Atlantic agrees with the Commission's proposed definition of operator services.[15] The obligation to provide nondiscriminatory access requires only that the exchange carrier offer to do for other carriers what it does for itself. It does not require the exchange carrier to provide different call handling methods or different credit card or other alternate billing arrangements.

The Notice also asks whether the Act requires exchange carriers to offer operator services and directory assistance services for resale by other telecommunications carriers.[16] To the extent that these are telecommunications services, section 251(b)(1) provides that they may be resold.[17] If they are telecommunications services offered to retail customers, incumbent exchange carriers must offer them for resale at wholesale prices under section 251(c)(4).[18]

No dialing arrangements for directory assistance other than 411 and 555-1212 are necessary.[19] A facilities-based provider will be able to use these numbers and route its customers calls in whatever way it chooses (to its own directory assistance, to that of the incumbent exchange carrier or to that or any other provider). When a non-

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15 Notice ¶ 216.

16 Notice ¶¶ 216, 217.

17 Some services provided through exchange carrier operator systems are not telecommunications services as defined in section 153, but are rather information services which are not included in the section 251(b)(1) obligation.

18 Directory assistance typically is not a stand-alone telecommunications service offered to retail customers. Particularly in light of the free call allowances and discounts required by State commissions, it should be viewed as part of a customer's basic local exchange service.

19 Notice ¶ 217

facilities-based provider buys exchange service from the incumbent under section 251(c)(4), its customers get exactly what the incumbent's receive, 411 and 555-1212 access to directory assistance.

Finally, other than clarifying the interpretations of the Act referenced above, no further Commission action is necessary regarding access to telephone numbers, operator services, and directory assistance and directory listings. There is also no need to try to develop a definition of what constitutes "unreasonable dialing delays."[20] To the extent that this ever becomes an issue, it is best handled with a specific factual record.

2. Number Administration

Bell Atlantic agrees with the tentative conclusions the Commission reached in the Notice — that it need do nothing further to satisfy the Act's requirement to appoint a new NANP Administrator;[21] that the Commission should retain the authority to set policy on all aspects of number administration and should delegate matters involving the implementation of new areas codes to the States, and the *Ameritech* order should continue to provide guidance to the States;[22] and that the Commission should delegate to Bellcore, the exchange carriers and the States the authority they had before enactment.[23] Bell Atlantic urges the Commission to proceed expeditiously with the process of transferring NANP administration functions from Bellcore and local administration from the exchange carriers to a new administrator.

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20 Notice ¶ 218.

21 Notice ¶ 252.

22 Notice ¶¶ 254, 256.

23 Notice ¶ 258.

The Commission asks whether it should delegate any other number administration functions to the States or to others.[24] Bell Atlantic believes that the Commission should wait to see how the new arrangements are working before considering any additional changes.

Finally, the Notice asks what the Commission should do if it appears that a State is acting inconsistently with the Commission's guidelines.[25] If a complaint is made, the Commission should act, as it did in the *Ameritech* case, to enforce federal policy.

3. Notice of Technical Changes

Bell Atlantic agrees with the Commission's tentative conclusions regarding the type of information that incumbent exchange carriers must provide under section 251(c)(5) of the Act.[26] This proposal would provide other carriers with the information they need in order to be able to use the exchange carrier's services.

As the Commission proposes,[27] the required disclosure should be made through industry fora or in trade publications, although direct disclosure to a mailing list of interconnecting carriers should also be allowed. In addition, if standards bodies develop new specifications, an exchange carriers should be permitted to satisfy its disclosure obligation by indicating its intention to deploy those specifications at the time they are published by the standards organization. Industry participants with an interest in

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24 Notice ¶ 258.

25 Notice ¶ 257.

26 Notice ¶¶ 189, 190.

27 Notice ¶ 191.

new interfaces routinely monitor publications and announcements for disclosures.[28] These procedures will ensure that new interface specifications are available in a timely manner.

The Notice asks what constitutes a "reasonable time" under this section.[29] This concept, of course, is not a new one to the Commission, and the Commission should continue to define it generically, as it does in the existing section 68.110(b), without prescribing a specific time for advance disclosure. The Commission should not adopt the rigid time periods of the Computer Inquiries II and III orders.[30] Experience with those time periods has demonstrated that they are too restrictive and can delay technical advances and new services. In some instances, new specifications are widely known well in advance of deployment, having been developed in standards fora, and equipment has already been designed to accommodate them. Forcing an exchange carrier to delay deploying the new interface for some fixed time period serves only to prevent customers from obtaining the new service — it does not promote competition. On the other hand, the reasonable notice needed for a highly complex new specification might exceed any standardized disclosure requirement. Therefore, the Commission should apply the existing "reasonable time" language of section 68.110(b) to disclosures required by

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[28] The Industry Carriers Compatibility Forum (ICCF) has recently issued a recommended set of disclosure procedures for ICCF participants that would be one way of affording reasonable notice. "Recommended Notification Procedures to Industry for Changes in Access Network Architecture," ICCF 92-0726-004 (Jan. 5, 1996).

[29] Notice ¶ 192.

[30] *Report and Order*, Computer Inquiry II, 2 FCC Rcd 143, 150-51 (1987); *Report and Order*, Computer Inquiry III, 2 FCC Rcd 3072, 3091-92 (1987).

section 251(c)(5). The Commission should review complaints regarding premature implementation on a case-by-case basis and, where necessary, issue a cease and desist order to suspend use of the new interface until a sufficient time has passed.

Sections 273(c)(1) and (4) regarding Bell company information disclosure are consistent with section 251(c)(5), except that section 273(c)(1) requires a Commission filing rather than public disclosure. The technical interconnection information addressed in section 273(c)(1) consists the same type of information covered in section 251(c)(5). Section 271(c)(4) requires "timely" provision of information relating to planned deployment of telecommunications equipment in a Bell company's network. The Commission should find that this section refers to deployment of information that affects interconnectors, and "timely" release of such information means that it should be made available a sufficient time in advance that the interconnectors may make any necessary changes to their networks. This is the same standard — "reasonable" advance notice — that Bell Atlantic urges the Commission to adopt in implementing section 251(c)(5).

4. Access to Rights of Way

Section 224 gives the States the opportunity to regulate rates, terms and conditions for pole attachments, and access to ducts, conduits and rights-of-way. The Commission's authority to regulate under this section is secondary and takes effect only where such matters are not regulated by the State.[31] Where a state has certified that it

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[31] 47 U.S.C. § 224(c)(1).

regulates the rates, terms and conditions of such access,[32] the Commission has no further role to play and its regulations do not apply.

Section 251(b)(4) merely requires all local exchange carriers to provide access to poles, ducts, conduits and rights-of-way to other providers of telecommunications services on terms consistent with section 224. That duty is met when the carrier provides access in compliance with State regulations. The provisions of section 224 at issue in this rulemaking (subsections (f) and (h)), therefore, apply only in States that have chosen not to regulate such access.

Section 224(f)(1) requires a utility to provide "nondiscriminatory access" to such facilities to cable systems and telecommunications carriers.[33] This means that access should generally be similar to that which the utility provides to itself or to an affiliate for similar uses of the facility. There are three exceptions to this general rule, however. First, a utility should be permitted to reserve the last duct for emergency installations. Second, the utility should have a right to deny access where it has specific plans to use the space for its own purposes within the utility's current planning period, generally two or three years. Third, if required by the terms of a carrier's State or local franchise agreement, facilities may be reserved for the exclusive use of local authorities.

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[32] 47 U.S.C. § 224(c)(2).

[33] The nondiscriminatory access obligation applies only to facilities "owned or controlled" by the utility. Congress recognized that a utility could not be required to provide access to facilities not owned by it or on property to which the utility itself had only limited access. In these cases, the matter is strictly between the party seeking access and the property owner.

Bell Atlantic urges the Commission to refrain from issuing detailed rules as to what constitutes "nondiscriminatory access" and to rely instead on the complaint process to resolve any disputes based on a full factual record.

All utility companies should have the same right as electric utility companies have under section 224(f)(2) to deny access "where there is insufficient capacity and for reasons of safety, reliability and generally applicable engineering purposes." No utility should be required to permit access under terms that would violate the National Electrical Safety Code,[34] the National Electric Code, any local safety or building code or ordinance, the Bellcore Construction Manual of recommended construction guidelines,[35] or any utility practice intended to protect the safety of its employees or the general public.[36] In addition, no telecommunications carrier should be required to permit access under terms that would threaten the reliability of the public switched telephone network by causing degradation of existing service levels below the minimum technical specifications identified in industry technical standard ANSI/IEEE 820.

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[34] For example, the National Electric Safety Code (at 235C1 (Table 235-5)) requires 40 inches of clearance between a power company's attachment at the top of a pole and any other communication attachment for safety reasons.

[35] For example, the Bellcore Manual of Construction Procedures requires a twelve inch separation between each pole attachment. Bellcore Manual of Construction Procedures at 3-2.

[36] For example, Bell Atlantic ensures that its workers have adequate climbing space without becoming entangled in attachments to the pole. Bell Atlantic Practice 460-300-111.

Where a service provider's request for access would require replacement of an existing pole, duct or conduit, that provider should bear the cost of replacing the facility and of transferring the attachments of other providers. Of course, if no larger facility can be installed or if the provider refuses to pay these costs, a utility may deny the request.

While section 224(h) requires the utility to give notice of any plans to modify a facility so that other providers have an opportunity to add to or modify existing attachments, there should be an explicit exemption for emergency repairs or when time is otherwise of the essence. A similar exemption should be granted for routine facility replacements for maintenance reasons. In such circumstances, it is highly unlikely that any attaching entity would need to add to or modify its attachment only with regard to that particular facility. Such a need is more likely to arise only when a series or line of facilities is being replaced, giving attaching entities the opportunity to decide to seek additional space on each facility or to use an alternative route instead. In addition, any duty to notify should be deemed waived or met where the attaching provider has contracted with the utility to transfer or modify that provider's attachments as necessary.

There is no need for the Commission to adopt rules under section 224(h) that would limit facility owners from making "unnecessary or unduly burdensome" modifications or specifications for pole attachments or access.[37] Because such modifications impose significant costs on the facility owner as well as other providers, it is in everyone's interest to make alterations only when necessary and prudent.

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[37] Notice ¶ 225.

Finally, the "proportionate share" of the costs to be borne by each attaching entity that modifies or adds to its attachment at the time of the modification, under section 224(h), should be calculated by dividing the total cost of the modification by the number of entities (including the owner) making changes to its own attachments to determine the percentage share of the costs to be borne by each provider.

There should not be any offset for any additional revenues that the owner might someday receive for additional attachments which the modified facility might accommodate. Owners of poles and other facilities undertake the work of modifying them because they need to, not with an eye toward attracting additional attachers and whatever revenue they might produce. There is no need for the Commission to establish a new administrative regime to regulate the re-distribution of these revenues.

Respectfully submitted,

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Dated: May 20, 1996

CERTIFICATE OF SERVICE

I hereby certify that on this 20th day of May, 1996 a copy of the foregoing "Further Comments of Bell Atlantic" was served on the parties on the attached list.

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